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C O N F I D E N T I A L SECTION 01 OF 03 SARAJEVO 000509

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DEPARTMENT FOR EUR(DICARLO), EUR/SCE(HOH/FOOKS),
S/WCI(WILLIAMSON; NSC FOR BRAUN

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TAGS: [PREL](#) [PGOV](#) [PINR](#) [KJUS](#) [KAWC](#) [BK](#)

SUBJECT: BOSNIA - HIGHREP'S OFFICE WILL STAY UNTIL JUNE 2008

REF: A. SARAJEVO 441

[B](#). SARAJEVO 433

Classified By: Ambassador Douglas McElhaney. Reason 1.4(b) and (d).

[1](#). (C) SUMMARY: At their February 26-27 meeting, the Peace Implementation Council (PIC) Political Directors agreed to continue the OHR's mandate with the aim of closing it down by June 30, 2008. Russia refused to join the consensus, however, insisting on a footnote in the communique highlighting its disagreement. Members of the Bosnian Tri-Presidency and the Chair of the Council of Ministers, who addressed the PIC, split along ethnic lines over OHR's future: Bosniaks and Croats supported OHR's extension, and the Serbs opposed it. The PIC offered broad support for a U.S. proposal on constitutional reform, but agreed the immediate priority must remain police reform. The High Representative expressed concern at a recently announced Bosnian Constitutional Court ruling challenging his position's powers to remove Bosnians from political office. OHR noted that there had been improved cooperation between Bosnian authorities and the International Criminal Tribunal for the Former Yugoslavia (ICTY) on war crimes issues. The Brcko Supervisor reported that the political situation in the District has deteriorated since the December PIC and that there had been little progress on the draft Law on Brcko District. Finally, OHR outlined the economic challenges confronting Bosnia. END SUMMARY

PIC, Minus Russia, Agrees to Extend OHR

[2](#). (SBU) At its February 26-27 meeting, the PIC Steering Board agreed that it was premature to close OHR in June this year and proposed to continue the mandate with the goal of closing OHR by June 2008. The PIC also agreed to review the situation in Bosnia at its October 2007 and February 2008 meetings. A decision on OHR closure will be made at the February 2008 PIC. All PIC members stressed their interest in seeing OHR close and Bosnians take full responsibility for managing their affairs, but noted events of the last year had raised questions about whether this was possible in June [2007](#). Russia refused to join the general consensus on extension, however. Instead, Russia insisted on appending a footnote to the PIC communique, which announced the decision, asserting that Russia will reach a conclusion at a later date about OHR's future "consistent with UN Security Council Resolution 1722." Rejecting legal arguments put forward by every other PIC member and OHR, Russia argued that only the UNSC had the authority to extend OHR. Other PIC members

repeatedly pointed out to Russia that UNSCR 1722 dealt with EUFOR's mandate, not OHR's, which is derived from the Dayton Accords.

Bosnian Split Along Ethnic Lines Over Extension

¶3. (C) Predictably, the members of Bosnia's Tri-Presidency, who addressed the PIC, split along ethnic lines over OHR's extension. Bosniak member Haris Silajdzic and Croat member Zeljko Komsic argued OHR's presence was essential to overcome lingering wartime ethnic divisions. Both men also argued OHR should remain open until the Stabilization and Association Agreement was signed and constitutional reform was completed. Serb member of the Tri-Presidency Nebojsa Radmanovic argued that it was time to transition from OHR to EUSR, but accepted that the PIC would likely decide to extend OHR instead. According to OHR staff, High Representative Christian Schwarz-Schilling had expected Silajdzic and Komsic to ask the PIC to extend his personal mandate as well, but neither did.

¶4. (C) Chairman of the Council of Ministers Nikola Spiric (a Serb) addressed the PIC later in the day. After reviewing his government's program and reaffirming his commitment to reform, he argued that if the PIC would not close OHR in summer 2007, the PIC should extend its mandate for only 6 months. He also argued the PIC should eliminate the Bonn Powers, which he criticized as arbitrary, and citing a March 2005 Venice Commission opinion on the Bonn Powers and the recent Constitutional Court case over ICTY-related removals (Ref B), Spiric suggested the Bonn Powers were inconsistent with European human rights standards. Spiric's last comment

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brought a sharp rebuke from the U.S. and PDHR Gregorian, who emphasized that the Bosnian government had an obligation to accept and respect OHR decisions.

U.S. Briefs Approach on Constitutional Reform

¶5. (C) The U.S. briefed the PIC on its approach to constitutional reform, noting that with a Bosnian state government now in place, the U.S. would soon be urging the parties to make a decision whether to seek passage of the U.S.-brokered package of amendments. The notional timeframe would be April, to avoid disrupting ongoing efforts to reach agreement on police reform (Note: EU representatives thanked the U.S. for making police reform the immediate post-government formation priority. End Note.) The U.S. noted that it would also propose to the parties that the amendments include new legislation to establish a follow-on constitutional reform structure. If the parties balked at moving ahead with the U.S.-brokered package, the U.S. would nonetheless work with the EU on another phase of constitutional reform. The U.S. briefed Schwarz-Schilling on this proposal at a brief bilateral prior to the PIC, and he agreed to support it, but stressed the importance of early staff talks involving the U.S., the European Commission, Germany (representing the Presidency), and EUSR staff about the legislation.

ICTY Cooperation

¶6. (C) OHR noted that since the last PIC, it had repeated contacts with ICTY representatives in Bosnia and The Hague, including direct exchanges between Schwarz-Schilling and ICTY Chief Prosecutor Carla DelPonte. The ICTY acknowledged that Bosnian judicial authorities had stepped up efforts to try war crimes, with the initiation of trials of cases transferred from The Hague. Nonetheless, OHR noted, inertia remains the hallmark of ICTY cooperation in other areas. OHR urged PIC members to maintain pressure on Bosnian authorities, particularly those in Republika Srpska (RS), to

cooperate fully with ICTY. OHR reported that since last December, direct contacts between The Hague and the RS have intensified, particularly over fugitive indictee Stojan Zupljanin. This has resulted in an increased number of ICTY-related activities by RS authorities, including searches of the premises of persons suspected of being part of PIFWC networks. OHR noted that it is currently exploring with ICTY and NATO how OHR might do more to support coordinated efforts against support networks.

Bosnia Challenges to Dayton and the UN

¶17. (SBU) The HighRep noted his concern over the recent decision by Bosnia's Constitutional Court that two 2004 ICTY-related removals by then HighRep Ashdown violated constitutional and European Convention on Human Rights (ECHR) rights of those removed from office. He characterized the decision as a challenge against Dayton, the UN Security Council and the PIC, and noted that he was considering how to respond. The HighRep pledged to consult with Steering Board Ambassadors on this issue in Sarajevo. The HighRep noted he continued to monitor Bosnian government actions with regard to decertified police officers, particularly its December decision to create a national review process for these cases. The HighRep reiterated that if the Bosnian government sought to implement the decision, he would have "no choice but to take action."

Brcko: Political Situation Deteriorates

¶18. (SBU) In his capacity as Brcko Supervisor, Raffi Gregorian told the PIC that political parties were increasingly playing up ethnic issues in Brcko. Bosniak politicians, in particular from Party for BiH (SBiH) and the Social Democratic Party (SDP), had boasted that key power positions within the Brcko District, would be controlled by Bosniaks. When the District's independent employment board chose non-Bosniak candidates, SBiH and SDP walked out of the Brcko Assembly. The Serb Democratic Party (SDS) exploited the situation and organized a corresponding Serb boycott of the

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Assembly, claiming that Serbs were facing assimilation by Muslims. Gregorian characterized the conduct of both sides as irresponsible and warned this type of conduct was likely to continue. In order to compensate for inadequacies of government and bureaucracy in Brcko and diminish the impact of party politics on government services, the Supervisor issued a number of Supervisory Orders in early February.

¶19. (SBU) The Supervisor also reported that he had continued to lobby political leaders for the early adoption of the draft Law on Brcko District, a process has been stalled by delays in government formation. He reported that several party leaders expressed the view that constitutional amendments may be necessary to regularize Brcko's status within Bosnia, and if they insist on this, adoption of the draft law could be further delayed. The Supervisor reported that Brcko District remained committed to an "out-of-court settlement" with regards to its case before the Tribunal that the Indirect Taxation Authority (ITA) regime violates two principles of the Final Award. According to Gregorian, the District perceives that the litigation threat has helped it achieve a more favorable distribution of revenues than it otherwise would have received. He told the PIC that the current Tribunal schedule calls for filing written submission by the end of April and oral hearings could take place in May, if the ITA dispute was not settled before then.

Economic Reform - Good and Bad News

¶10. (SBU) OHR reported that Bosnia enjoyed 5.4 percent GDP growth in 2006, but that, generally, its economic performance

continued to lag behind other countries of the region, notably in attracting foreign investment, creating employment, and improving its business environment. Bosnia's government needed to take stronger ownership for economic policy-making and improve policy coordination, if it wanted its economic performance to improve. In this context, OHR stressed the importance of resolving problems with the ITA, establishing a strong National Fiscal Council, and adopting legislation necessary to create a single economic space within Bosnia (i.e., the laws highlighted in OHR's Mission Implementation Plan and the HighRep's May 2006 speech to the Parliamentary Assembly, none of which have been adopted).

MCELHANEY